Reserved

COURT NO.3

Criminal appeal No.815 of 2001
(Old no.31 of 2000)

R.K. Ojha ……..Appellant

Vs.

State …….Respondent

Hon'ble Irshad Hussain

Appellant was convicted and sentenced to pay a fine of Rs.1,000.00 under section 504 of the I.P.C. per judgment and order dated 13.12.1999 passed by Sessions Judge, Tehri Garhwal in session trial no. 17 of 1997.

Briefly stated prosecution case was the appellant was head constable in Central Industrial Security Force and was posted at its T.H.D.C. until Tehri on 22.08.1996; on that day about 1:00 P.M. he had without provocation fired two shots from his service 7.62 mm. bolt action rifle towards the office of until commander as he was aggrieved on being deputed to take election duty; none was hurt in the incident; a case was registered under section 307 I.P.C.; appellant pleaded not guilty and claimed to be tried.

In the trial witnesses were examined. Out of these P.W.1, Jitendra Singh Negi unit commander of C.I.S.F. gave out that the appellant fired shot by giving threat to kill him while he was inside the office. Similar claim was made by company commander P.W.2, Harbeer Singh, who lodged the F.I.R., Ext.ka.1 of the incident Another witness P.W.3, R.K.Sharma a head clerk in the office of the unit of C.I.S.F heard the noise of the two fire shots. Two other

unit of C.I.S.F heard the noise of the two fire shots. Two other witnesses of fact, P.W.5 K.D.Rai a driver of C.I.S.F. unit and P.W.6 Saroj Bala, lady constable with the C.I.S.F. also posted in the same unit, have not supported the prosecution version and they were declared hostile. P.W.7 Rajendra Singh and P.W.9 Raj Kumar Bishnoi are the investigating officers of the case and they had proved various steps taken towards the investigation of the case and proved relevant documents including the charge-sheet. P.W.4 constable Bindeshwar Prasad and P.W.8 head constable Jasmal Singh were the witnesses of the fact that the appellant came to the police station and handed over his rifle, 48 live and two empty cartridges. Learned Sessions Judge on his appreciation of the evidence on record was of the view that it was not a case of attempt to commit murder because there was nothing to indicate that the appellant had intended to kill any of the members of his unit, but came to the conclusion that the appellant had committed offence punishable under section 504 I.P.C. as he intentionally insulted his superiors with intent to provoke breach of the peace and accordingly held him guilty and convicted and sentenced him as mentioned above.

Heard Sri R.D.Khare, learned counsel for the appellant and the learned A.G.A.

Learned counsel for the appelant argued that when it had been found on the basis of the evidence that the appellant had no intention to kill any of the officers of his unit and had not fired aiming them, the learned Sessions Judge was not justified in drawing inference that the appellant intentionally insulted P.W.1 and P.W.2 with intent to provoke breach of the peace, and therefore the conclusion so drawn is not based on proper and fair appraisal of the evidence on record. The two essential ingredients of section 504 of I.P.C. are- (1) intentionally insulting a person and thereby giving provocation to him and (2) the person insulting must intent or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence.

the learned counsel for the appellant, P.W.1 assistant commandant Jitendra Singh Negi has testified that the bullet said to have been fired by the appellant could not have been traced in the false ceiling of the office. Similar assertion has been made by unit commandant P.W.2, Harbeer Singh. Not only this investigating officer P.W.7 Rajendra Singh Gosain claimed that despite efforts the bullet could not be traced form the scene of the occurrence. Considering this peculiar features of the case as argued serious doubt is created in regard to the claim made regarding firing of the shot by the appellant and therefore on the basis of the shaky evidence of the prosecution it cannot safely be accepted that the appellant fired shots intentionally insulting his superiors thereby giving provocation to them. Merely because out of the fifty live cartridges issued to the appellant only forth eight live and two empty cartridges were seized it would not be safe to draw an inference that two shots were fired form the rifle by the appellant with intent to insult his superior officers. Considering this aspect of the matter also the submission made on behalf of the appellant cannot be easily displaced. Taking into account the facts and circumstances of the case as mentioned above it is not established that the appellant intentionally insulted his superior officers and thereby gave provocation for breach of peace.

In view of the above first ingredient of the offence having not been satisfied there appear to be no reason to believe or infer that the appellant knew it that such provocation will cause the superior officer to break breach of the peace or to commit any other offence. In view thereof it is to be found that second ingredient of the offence is also not established beyond doubt and the leaned Sessions Judge has not taken into account theses legal aspects of the matter while holding the appellant guilty of the offence under section 504 I.P.C. Considering the facts and circumstances of the case, the appellant had deserved to be extended benefit of doubt when even the two serving members of the same unit P.W.5 and P.W.6 had not supported the prosecution version against the appellant.

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For the above reasons and discussion it is held that the offence under section 504 of the I.P.C. was not made out against the appellant beyond reasonable doubt and the appellant is entitled to be acquitted of the said offence. In other words the appeal is fit to be allowed.

Appeal is allowed. Judgment and order dated 13.12.1999 is hereby set aside. Appellant R.K.Ojha is held not guilty and acquitted of the offence under section 504 of the I.P.C. Fine, if any, deposited by the appellant shall be refunded to him.

29.04.2003/B.

(Irshad Hussain, J.)